IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

	)	2 CA-JV 2007-0049
	)	DEPARTMENT B
	)	
IN RE JOVANY L.	)	MEMORANDUM DECISION
	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. JV200700052

Honorable Gilberto V. Figueroa, Judge
Honorable David Powell, Judge Pro Tempore

AFFIRMED

James P. Walsh, Pinal County Attorney
By Susan Crawford
Florence
Attorneys for State

Mary Wisdom, Pinal County Public Defender
By Teri L. Shaw
Florence
Attorneys for Minor

E S P I N O S A, Judge.

¶1 Jovany L. was adjudicated delinquent after the juvenile court found he had committed theft and placed him on one year's supervised probation. On appeal, Jovany contends the juvenile court erred by admitting into evidence at the adjudication hearing his

confession and other statements he had made to the victim before he was taken into police custody, arguing the statements were not voluntarily made. We affirm for the reasons stated below.

¶2 We view the evidence in the light most favorable to affirming the juvenile court's order. *See In re James P.*, 214 Ariz. 420, ¶ 2, 153 P.3d 1049, 1051 (App. 2007). The victim, the only witness at the adjudication hearing, testified he had been on his way home when he noticed a tractor stopped in a wash on his property. He determined the tractor was his and had been moved from where he had left it. As the victim approached to investigate, he saw a white object fall out of the tractor, and as he got closer, he saw a "white object down in the very bottom of the wash about a hundred yards away from the tractor." He realized the object was a person when it moved and began running away from him. The person was later identified as Jovany. The victim chased Jovany, "lost him" at one point, but eventually caught up with him after getting "a glimpse [of Jovany] down in the ditch."

¶3 The victim placed his hand on his hip "as if to show [Jovany] that [he] had a weapon" and said, "stop or I will shoot." Jovany "went right to the ground [and] laid his arms out." The victim then told Jovany that he did not have a gun, but that he was going to call the police. The victim tied Jovany's left hand and right foot behind Jovany's back and waited for the police to arrive. During the hour Jovany was tied up before police arrived, he pled with the victim to let him go, saying he would "work for" the victim or "do anything." The victim asked Jovany how old he was and why he was stealing the tractor.

Jovany replied that he was seventeen (he was actually thirteen at the time) and told the victim that "somebody had stole[n] his bicycle and he wanted to get to Stanfield."

¶4 Defense counsel objected to the admission of Jovany's statements to the victim based on lack of voluntariness. The juvenile court overruled the objections, commenting that Jovany had not been "in custody" when he had made them. Jovany contends the court erred.

¶5 Unlike statements taken in violation of *Miranda*,[1] a defendant's involuntary statements are inadmissible regardless of whether they were made during custodial interrogation. *See State v. Stanley*, 167 Ariz. 519, 523-24, 809 P.2d 944, 948-49 (1991) (recognizing voluntariness of defendant's statement to police and *Miranda* violation were distinct issues and that latter required defendant to be in custody). "Whether or not a suspect is in custody, all confessions 'must fall within the broad constitutional boundaries imposed by the Fourteenth Amendment's guarantee of fundamental fairness.'" *In re Timothy C.*, 194 Ariz. 159, ¶ 12, 978 P.2d 644, 647 (App. 1998), *quoting Miller v. Fenton*, 474 U.S. 104, 110 (1985); *see also In re Gault*, 387 U.S. 1, 30-31 (1967) (applying due process guarantee to juvenile proceedings). The Fourteenth Amendment requires preclusion of "involuntary confessions," which are "confessions that are the product of coercion or other methods offensive to due process." *In re Jorge D.*, 202 Ariz. 277, ¶ 19, 43 P.3d 605, 609 (App. 2002).

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[1]*Miranda v. Arizona*, 384 U.S. 436 (1966).

¶6 However, "a due process claim must be based on 'state action.'" *Timothy C.*, 194 Ariz. 159, ¶ 14, 978 P.2d at 647; *see also State v. Sharp*, 193 Ariz. 414, 421, 973 P.2d 1171, 1178 (1999) ("Fulfilling the state action requirement is essential because the protections contemplated by the Fourteenth Amendment . . . apply only to state actors, not to private parties."); *State v. Eggers*, 215 Ariz. 472, ¶ 29, 160 P.3d 1230, 1241 (App. 2007) (same). In *Colorado v. Connelly*, 479 U.S. 157, 165 (1986), the Supreme Court explained that "'involuntary confession' jurisprudence is entirely consistent with the settled law requiring some sort of 'state action' to support a claim of violation of the Due Process Clause of the Fourteenth Amendment." And, state action does not exist merely through the admission of a confession into evidence. *Id*. at 165-66. Even "[t]he most outrageous behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible under the Due Process Clause." *Id*. A fact-finder may certainly consider the coercive circumstances surrounding a confession to a private individual in assessing the credibility or weight of the confession, but those circumstances do not affect its admissibility. *Cf. State v. Williams*, 166 Ariz. 132, 138, 800 P.2d 1240, 1246 (1987) (argument that witness identification of defendant was procured by unduly suggestive procedure affected credibility of identification but not admissibility when no state action involved).

¶7 Clearly, there was no state action with respect to Jovany's statements to the victim. Nonetheless, Jovany argues, "[c]ase law supports the general proposition that a

confession made to a private individual, neither employed by nor acting for the State, may . . . be involuntary" and, therefore, inadmissible. However, he relies exclusively on pre-*Connelly* case law. Jovany also relies on A.R.S. § 13-3988(A), which provides that, "[i]n any criminal prosecution brought by the state, a confession shall be admissible in evidence if it is voluntarily given." But, nothing in the language of § 13-1988, its application, or Arizona case law in general, suggests that Arizona provides protection against the admission of "involuntary" confessions beyond that provided by the Fourteenth Amendment. Because "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment," *Connelly*, 479 U.S. at 522, we find no error in the juvenile court's admission of Jovany's statements.

¶8 The juvenile court's adjudication and imposition of probation are affirmed.

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PHILIP G. ESPINOSA, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge